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SINCE 1938**

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October 24, 2011

Dear Representatives:

HB 5002 has been fixed with revisions on some of the minor issues. On the major issues though, HB 5002 still needs a lot of work. As the bill is currently written, many magistrates will still feel the need for both employers and employees to spend thousands of dollars on vocational experts every time an injured worker is injured in order to determine whether a worker is entitled to wage loss benefits and to determine the benefit rate. This is a completely unnecessary waste of money for everyone involved in the process. The State Bar of Michigan's Workers' Compensation Section, composed of both Plaintiff and Defense Attorneys, proposed alternative language to define disability and to calculate partial disability benefits for Sections 301 and 361 of the Act. Please pause and think before you vote to institutionalize these increased costs on Michigan businesses. The Section's proposals are again attached for your review and consideration.

In the substitute bill introduced last week, a new Section 301(12) was proposed that would require every injured employee to seek employment—even those laying in hospital beds—or their benefits would be reduced. It has been reported that this provision will be stricken from the bill to be circulated today. If so, good. However, it has also been reported that the provision is simply going to resurface following Section 301(4)(b) with language along these lines: "For the purposes of establishing wage earning capacity, an employee has an affirmative duty to seek work reasonably available to that employee...."

It should not be the law in Michigan that, while they are lying in a hospital bed, every injured police officer, hospital physician or CEO, must apply for work at McDonald's, or as a greeter at Wal-mart, as soon as they are hurt on the job in order to collect a workers' compensation check. The proponents of this bill in their testimony last week claim this is not their intent. If so, this needs to be clear before this bill comes out of Committee. If the Committee is determined not to adopt the recommendations of the State Bar of Michigan, at the very least, the proposed language should be changed to state:

"For the purpose of determining wage earning capacity, a partially disabled employee, has an affirmative duty to seek work which will restore the employee's earnings in a remunerative occupation.¹ A magistrate shall consider such good faith job search efforts to determine whether jobs are reasonably available and whether the employee has a wage earning capacity."

Thank you for your consideration. I remain

Very Truly Yours,


Robert J. MacDonald

¹ This language would harmonize with MCL 418.319, the vocational rehabilitation provision of the Act. If a worker is unable to perform work given his previous training and experience, additional training can be obtained to restore an injured worker to a "remunerative occupation."

Section 301(4)(a) and Section 401(1)

(4)(a) As used in this chapter, "disability" means a limitation of an employee's ability to perform his or her job at the time of injury as well as any other job held by the employee in the 15 years before the date of injury, if the prior job paid as much or more than the job at the time of injury.

(b) An employee making claim for wage loss benefits shall, upon request of the employer, disclose the name and addresses of the employers known to him for the 15 years prior to the date of injury, and for each employer, provide the wage rate, and a brief description of the job duties and exertional level. The employee shall, if requested by the employer, authorize prior employers to release the same information. All employers subject to this act shall, upon written request, promptly complete and return to the requesting employer and the employee the requested information on the agency approved forms designed to disclose this information. If the employee is unable to provide all the names or addresses of the prior 15 years' employers, or if the employer requests, the employee shall authorize the Social Security Administration to release earnings records for the prior 15 years to the employer.

(c) Pursuant to section 221, the Director of the Agency shall create whatever forms are deemed necessary to facilitate the disclosure of the information in subsection 4(b).

Sec. 361. (1) While the wage loss resulting from a personal injury is partial, the employer shall pay, or cause to be paid to the injured employee weekly compensation equal to 80% of the difference between the injured employee's after-tax (eliminate average) weekly wage before the personal injury and the after-tax average weekly wage which the injured employee actually earns after the personal injury, but not more than the maximum weekly rate of compensation, as determined under section 355. Compensation shall be paid for the duration of the disability. However, an employer shall not be liable for compensation under section 351, 371(1), or this subsection for such periods of time that the employee is unable to obtain or perform work because of imprisonment or commission of a crime.